

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

ODELL DOBBS,

ORDER

Petitioner,

11-cv-663-bbc
10-cv-584-bbc
08-cr-102-bbc

v.

UNITED STATES OF AMERICA,

Respondent.

Petitioner Odell Dobbs pleaded guilty in 2008 in this court to possessing with intent to distribute 50 grams or more of crack cocaine, in violation of 21 U.S.C. § 841(a)(1). United States v. Dobbs, 08-cr-102-bbc. He received a sentence of 262 months. In October 2010, he filed a motion to vacate his sentence under 28 U.S.C. § 2255, which I denied. Dobbs v. United States, 10-cv-584-bbc. Now petitioner has filed another motion challenging his sentence, contending that the court erred in concluding that he was a career offender under U.S.S.G. § 4B1.1.

I cannot consider petitioner's filing until he clarifies the nature of the filing. Petitioner says that his motion is motion for reconsideration under Fed. R. Civ. P. 60(b) of

the court's dismissal of his § 2255 motion. He also says that his filing is a petition for a writ of habeas corpus under 28 U.S.C. § 2241. However, these are distinct types of actions and petitioner's filing cannot be both a motion for reconsideration and a petition for a writ of habeas corpus. Courts "must respect the plaintiff's choice of statute to invoke—whether § 2241, § 2255, or 42 U.S.C. § 1983 [or Rule 60(b)]—and give the action the treatment appropriate under the law." Collins v. Holinka, 510 F.3d 666, 667 (7th Cir. 2007). Thus, I cannot address petitioner's filing until he clarifies it.

ORDER

IT IS ORDERED that petitioner Odell Dobbs may have until December 15, 2011 to advise the court whether he is bringing this action under Fed. R. Civ. P. 60(b), 28 U.S.C. § 2255 or 28 U.S.C. § 2241.

Entered this 2d day of December, 2011.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge